

## Copyright and the MusicBusiness in Jamaica- Protection for Whom?

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### **Resumo**

Este artigo rastreia o desenvolvimento das leis de direitos autorais nos 50 anos da indústria musical jamaicana e explora como o copyright afetou o desenvolvimento da música popular durante o nascedouro do Ska, Rocksteady, Reggae e Dancehall. O artigo mostra que o copyright e os direitos de propriedade intelectual nunca foram uma prioridade no mercado musical da Jamaica, que, ao invés disso, trazia um sistema de motivações não-econômicas e autoria coletiva da música que se prestou mais a estimular do que a dificultar a criatividade. A Lei de Copyright de 1993 será examinada no sentido de analisar a virada em direção à proteção e à remuneração adequada para os criadores de materiais com direitos reservados. O artigo demonstra que o crescimento acelerado do gerenciamento da proteção dos direitos autorais na Jamaica depois de 1993 foi mais uma resposta para a pressão internacional das nações industrializadas, que estavam mais interessadas em controlar a pirataria da propriedade intelectual gerida pelos enormes conglomerados de entretenimento da América do Norte e da Europa, do que uma proteção para o criador individual do trabalho intelectual.

**Palavras-chave:** Música popular, Jamaica, propriedade intelectual

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### **Abstract**

This paper will trace the development of copyright in the 50-year old Jamaican music industry and explore how copyright affected the development of popular music during the nascent years of Ska, Rock Steady, Reggae and Dancehall. The paper will show that copyright and intellectual property rights were never a priority of the music business in Jamaica, which featured instead, a system of non-economic motivation and communal authorship of music which assisted in fuelling creativity rather than retarding it. The 1993 Copyright Act will be examined in order to analyse the shift towards ensuring adequate protection and remuneration for creators of copyrighted materials. The paper will demonstrate that the accelerated growth in copyright protection and rights management in Jamaica after 1993 was more of a response to international pressure from industrialised nations who were more interested in controlling the piracy of the intellectual property of the large entertainment conglomerates in North America and Europe than protecting individual creator intellectual work.

**Keywords:** Popular music, Jamaica, intellectual property

### **Resumen**

Este artículo rastrea el desarrollo de las leyes de derechos autorales en los 50 años de la industria musical jamaicana y explora como el copyright afectó la música popular durante el nacimiento del Ska, Rocksteady, Reggae y Dancehall. El artículo muestra que el copyright y los derechos de propiedad intelectual nunca fueron una prioridad en el mercado musical de Jamaica, la cual tenía un sistema de motivaciones no económicas y autoría colectiva de la música que se prestó más a estimular que dificultar la creatividad. La Ley de Copyright de 1993 será examinada en el sentido de analizar el cambio en la protección y la remuneración adecuada para los creadores de materiales con derechos reservados. El artículo demuestra que el crecimiento acelerado del gerenciamiento de la protección de los derechos autorales

en Jamaica después de 1993 fue en realidad una respuesta a la presión internacional de las naciones industrializadas, las cuales estaban más interesadas en controlar la propiedad intelectual generada por los enormes conglomerados de entretenimiento de América del Norte y de Europa, de que dar una protección para el creador individual del trabajo intelectual.

**Palavras-chave:** Música Popular, Jamaica, propriedade intelectual.

The story of copyright protection within the Jamaican music industry does not start with the enactment of the new Copyright Act in 1993. Contrary to the observations of many commentators (BRADLEY, 2000; HEBDIGE, 1987), who have lamented the lack of proper copyright protection in Jamaica and see it as a major deterrent to the economic well being of the music business due the absence of any proper rights management mechanism. The fact is that Jamaica has had a copyright law since 1913, an adaptation of the 1911 Copyright Act of Britain, which was passed by the colonies of the British Empire, of which Jamaica was a part. However, in colonial Jamaica, copyright protection was intended for the colonial masters, whose composers and musicians needed protection for such works that were exploited in the colonies. In 1914, the Performing Rights Society (PRS) was formed in Britain to collect money for the public use of copyrighted works in an effort to curtail the unauthorized use of these works. A branch of the PRS was also set up in Jamaica, again to secure the rights of English creators as part of the Imperial copyright system created by the Copyright Act of 1911. The Jamaican branch, like all other British outposts,

reported to the London office (EHRlich, 1989, 125).

With the start of the indigenous music business in the 1950s, many of the early creators were not sufficiently knowledgeable about the protection of copyright and the pecuniary benefits it had the potential to accrue. Cater Van Pelt observed, “the law was relatively modern in most senses, and many record producers abided by it to the letter. However Jamaicans in general, and musicians in particular, were not broadly aware of the meaning, much less the legal intricacies, of copyright” (2006: 89).

In addition, it must be noted that the music business in Jamaica did not start with an abundance of original works. During the 1960s when the music really took off commercially, a significant number of the early songs recorded, were covers of American Rhythm and Blues, Blues and British pop. This practice had started with the pioneer producers, who as sound system operators imported American and British records for consumption at dances. With the mushrooming of recordings in Kingston, many singers did not have sufficient proficiency as songwriters. In order to fill the gap, the top producers handpicked records from North America and later Britain for them to cover. This practice was largely enabled by the non-enforcement of copyright legislations, which protected owners of copyright from the infringement of their works. Additionally, infringement went on relatively unnoticed as the American and British publishers and administrators of these rights did not know generally of the existence of these covers and even when they did know, the market was viewed as so insignificant that the returns were not worth the effort of pursuing litigation.

The following songs fall in this category:

<u>Song</u>	<u>Jamaican Singer</u>	<u>Original Singer</u>
1. Rain from the Sky	Delroy Wilson	Adam Wade
2. A Love I Can Feel	John Holt	The Temptations
3. (No, No, No) You Don't Love Me	Dawn Penn	Willie Cobbs
4. You Don't Care	The Techniques	The Impressions
5. No Man Is An Island	Dennis Brown	The Van Dykes
6. My Boy Lollipop	Millie Small	Barbie Gaye
7. Black Bird	The Paragons	The Beatles
8. Left With A Broken Heart	The Paragons	Four Tops
9. You Make Me So Happy	Alton Ellis	Blood, Sweat and Tears
10. Feel Good All Over	Delroy Wilson	The Drifters

Not only did the early producers cover the songs of African-American Jazz, Blues and R&B and British pop through what Jason Toynbee calls *phonographic dissemination*, but many musicians and singers developed their craft by learning the styles which they heard on the records (2000: 74). The importation of 12-inch 78 RPM, 12-inch 33 RPM and 7-inch 45 RPM records by the sound system boss/producer, facilitated this new form of “mediated orality” and “enormously extended the possibility of participation in music-making” (TOYNBEE, 2002:77). The process of crystallization concretized the Anglo-America

aesthetics of popular music making; vocal styles and popular song structure were cemented due to the size of the 45 RPM, which could not facilitate songs longer than 4 minutes. Most Anglo-American popular recordings relied on the verse-chorus song structure; in this structure the chorus is repeated several times with the same words and tune; while the verse is repeated with the same tune but different lyrics (SPITZER and WALTERS, 2003).

Another style that was adopted by Jamaican performers was the use of a hook, which is a “memorable verbal phrase set with a melodic fragment that seems to fit the words like a glove”<sup>1</sup>. The hook is repeated several times during the song, becoming the most significant part of the song. Through *crystallization*, vocal styles of American and British artists such as the Impressions, the Drifters, Al Green, Tom Jones and the Temptations were imitated and subsequently developed by Jamaican artists into a distinctive indigenous vocal aesthetic. The three- and four-part harmony structure of groups such as the Impressions and the Temptations were widely copied by Jamaican groups such as the Paragons, the Wailers, the Uniques, the Gaylads and the Techniques.

### **Creative Commune**

The dynamic nature of the Jamaican content could not be explained exclusively by the above mentioned processes. While *phonographic dissemination* and *crystallization* might have jump-started the creative process of popular music production, artists in Kingston, eventually drew on the rich tradition of the oral expressions, the foundation of Jamaican cultural heritage.

Mento (the popular music form before the emergence of Ska), and other folk and religious music expressions, such as, Revivalism, Pocomania, Kumina and Nyabinghi, began to emerge in ska, rock steady and reggae. European styles were simultaneously being incorporated with even the Rastafarians adopting the European hymns to create their own Groundation music (HEBDIGE, 1987).

This altered the composition structure, resulting in a deviation from the standard song structure of verse-chorus in favour of Afro-European retentions which also incorporated a *through-composed* structure, where neither words nor music repeat, and also a *strophic* structure, where the tune repeats several times with new words (SPITZER and WALTERS, 2003) Early songs composed by groups such as Toots and the Maytals, Burning Spear and later Culture, fall into this category. These acts created new forms of composition styles by fusing the various styles of Anglo-American, African and creolized Caribbean methods of song construction. Therefore engaging in a process, which I have termed *Phonographic Synthesis*.

The lyrics of Toots and the Maytals' hit "Sweet and Dandy", illustrates the shift, which took place in the song construction.

Etty in the room a cry/ Mama say she must wipe her eye/  
Papa say she must be foolish like she never been to school at  
all/ It is no wonder, it's a perfect pander / While they were  
dancing in that bar ballroom last night./ Johnson in the room  
a fret/ Uncle say he must hold up him head /Aunty say he  
must be foolish, like

it's not time for his wedding day/ It is no wonder, it's a perfect pander/ While they were dancing in that ballroom last night./ One pound ten for the wedding cake, plenty bottle of cola wine/ All the people them dress up in a white/ They go eat out Johnson wedding cake/ It is no wonder, it's a perfect pander / While they were dancing in that bar ball room last night/ Etty in the room a cry /Mama say she must wipe her eye/ Papa say she must be foolish like she never been to school at all/It is no wonder, it's a perfect pander / While they were dancing in that ballroom last night/ Johnson in the room a fret / Uncle say he must hold up him head/ Auntie say he must be foolish, like it's not time for his wedding day/ It is no wonder, it's a perfect pander / While they were dancing in that ballroom last night / One pound ten for the wedding cake, plenty bottle of cola wine/ All the people them dress up in a white / They go eat out Johnson wedding cake/ It is no wonder, it's a perfect pander /While they were dancing in that bar room last night/ Sweet and dandy, Sweet and dandy, Sweet and dandy, Sweet and dandy.

The standard verse-chorus-verse structure had been abandon by Hibbert for the unstructured format where he has three short verses. The verses are repeated once. Then the song ends on the hook “sweet and dandy”. Hibbert’s structure is reminiscent of African field songs with emphasis on the hook and not the verse and vocal. Treatment of the hook is used to exhibit vocal dexterity in the phrasing and delivery. Employing the same virtuoso style of the Jazz and blues musician Burning Spear’s song, “Foggy Road” is another example.

My way is long but the road is foggy, foggy/My way



is so long so long but the road is foggy, foggy /My head  
never swell, / My heart never leap, /I never have no fear  
from within/Even though the road is- so foggy, foggy/Tea  
can hardly see /Jah Jah is my eye sight /Be with I, be with I,  
be with I/ Jah Jah, Jah Jah be with I/I and I and I and I/They  
and them that hate I/They and them fight against I/Some of  
them judge I wrongfully /But never mind my brother I will  
go on/The road is so foggy, foggy /The road is so foggy so  
foggy, foggy/Guidance be with I and I /Going out and  
coming in/ From all evil thing evil doers/Let me tell you  
accidental clue/The road is so foggy, foggy yea /Foggy  
road/Foggy road/ Foggy road/Foggy road/Foggy  
road/Foggy road/Foggy road/Forward my brother / No  
more stumbling block/ Jah Jah is I and I and I eye sight /So  
foggy road /So foggy road/ So foggy road/ So foggy road/  
So foggy road /So foggy road/Can hardly see / Be with I  
and I and I /Jah Jah, Jah Jah/This road is so foggy I wonder  
why / I wonder why the road is so foggy/ Foggy road foggy  
road yea / Jah Jah be with I and I and I Jah/Jah foggy road  
yea / Foggy, foggy, foggy, foggy.

Spear's use of a semi-strophic structure is evident in this song with almost none of the lyrics repeating apart from the hook "so foggy", again employing a fusion of African and European styles to create a new method of songwriting. This suggests a rejection of the Anglo-American style of pop song composition, which was the standard format for the main producers such as Coxsone Dodd, Duke Reid, Bunny Lee and Prince Buster. Toots recalled being rejected by Duke Reid who felt his lyrics and vocals were too parochial and told him to come back in a year's time (Personal conversation, 2005). Duke Reid told Lee "Scratch" Perry that he was too "country" and was not ready for the business. (Interview, 2007).

Once these artists got their break they went about reshaping the structure of pop song construction, resisting the North Atlantic norms for an aesthetic, which represented their identity as perceived by them.

### **The Open Domain**

These new forms of popular song composition and production were done in what I have termed an *Open Domain* environment. This was an environment devoid of copyright enforcement and, more significantly, was characterized by the exploitation of creators who were not aware of copyright protection nor was concerned with its implications with regard to its economic benefits. This established a situation where some producers were able to exploit a creator's ignorance and cajoled or coerced him into assigning away his rights without adequate compensation (VAN PELT, 2006: 7). Copyright protection was not paramount among the creative class who practiced their craft in a communal environment. Lyricists' and composers' emphasis was not on ownership of lyrics and music.

This was perhaps one of the African retentions of the working class black majority who made up the creative class. This traditional practice ran counter to the Anglo-European notion of property rights, the very basis of copyright legislation. It would also seem to suggest that there was a non-economic motivation to the creation of musical works in the open domain environment of Kingston's recording industry (MANN, 2000). In the colonial context, in which the new music was evolving,

black emerging entertainers from the inner slums of Kingston, placed a higher premium on the notion of being a star rather than a songwriter with copyright protected material. The “promise” of delayed remunerations in the form of royalties, no matter how significant the amounts, were in that context, unimportant.

As mentioned before, since the advent of an indigenous recording industry in Jamaica, infringement of copyrighted works and piracy were an integral part of the structure. Producers and performers received no permission to cover the songs they freely used and furthermore, they did not credit the author of the copyright protected material. Certainly this was a clear violation of copyright law. However, no serious attention or consequence resulted from these infringement practices, due largely to several factors including the small size of the market, communal song construction (which drew from sources such as the bible, folk tales and nursery rhymes) and also the practice of phonographic dissemination.

Local producers were not spared these acts of infringement. There were several known cases of producers covering rhythm tracks of fellow producers. In fact, almost every major producer from the 60s up to the present copied the Studio One catalogue of rhythms. Coxsone allowed this to happen despite the fact that he knew he could stop this infringement. A plausible reason for allowing this infringement was that he was also aware of the disquiet among musicians and vocalists who accused him of not advancing them or paying regular royalties from record sales. Once a producer made a hit rhythm, other producers would do a similar version of the rhythm without fear of prosecution.

Some riddims (rhythms) such as *Heavenless*, *Rockfort Rock*, *Throw Me Corn*, *Hot Milk* and *Full Up* have been rerecorded more than a 1000 times by numerous producers over the decades. Like some three hundred years before, Jamaica was a pirate's paradise! In the Open Domain system this practice was never seen as piracy or infringement of material controlled by copyright. In fact, many of these rhythms were never registered and hence, were not protected<sup>2</sup>. Symbol creators viewed the unauthorized copying of rhythms as a means of paying homage to a great piece of work. The use of the rhythm for a hit song created an opportunistic motive.

Producers who owned hit "riddims" saw the "licking over" (cover) of his/her riddim as a sign of respect of the quality of the work, which afforded bragging rights among his/her peers. Some producers even added new instruments to the original and renamed the original riddim, in a sense claiming the work as his/her own property, a concept which is known in copyright philosophy as derivative works.

Many producers continued to register works, which they owned through a concept referred to in the US copyright act as "work-for-hire", and also registered works they had no right to, but since the creators were often ignorant of his or her rights, they continued to develop and formalise a culture of piracy. Many scholars have noted the exploitation of the Jamaican symbol creators who were cheated out of their intellectual property by unscrupulous producers. However, this was not unique to Jamaica as a similar tradition of stealing was perpetrated by the big

capitalist record companies in the US on a similar unsuspecting group of rhythm and blues and rock and roll African-American writers. Many songwriters were robbed of their creation due to circumstances similar to those outlined in the earlier Jamaican experience.

The big record giants in the US exploited performers, many of whom died penniless. (KELLY, 2005). Simon Frith also notes:

The pop industry is organized around music as composition – American copyright law protects composers rather than performers. It is songwriters who get royalties when records are sold or broadcast, not their performers, and black singers who were popular in the 1920s and 1930s were systematically cheated out of their due returns. Their music, however distinct, was in a legal sense “composerless”, and it was white publishers who rushed to copyright the resulting “spontaneous” compositions. Such exploitation of black musicians by publishers and record companies continued into the 1960s, and in fighting for their economic rights, these musicians learned that if they couldn’t necessarily make money out of the recordings of specific performances, they could make money out of their general performances, they could become part of the star system. (1981, 17)

It is clear that this tradition of stealing<sup>3</sup> was an entrenched practice within the culture industry and Jamaican producers were adopting an “acceptable” metropole practice in the traditional hegemonic control practices of the colonial realities. Coxsone Dodd, one of the pioneer producers and studio owners registered

his publishing company, Jamaica Recording and Publishing Company (Jamrec), by the early 1960s to administer the copyright on his sound recordings, literary and musical work, though he was not the creator of these works. Other top producers such as Byron Lee, Bunny Lee and Winston Riley quickly learnt the benefits of copyright ownership and secured the rights to their sound recordings and also the literary and musical works in the recordings they produced, despite the fact that they did not create most of these works.

### **Simultaneity**

The Open domain environment persisted until the 1990s in the Jamaican music industry. Paralleling this unsavory situation were a growing number of creators, including Derrick Harriott, Jimmy Cliff, Bob Marley, Third World and Bob Andy, who were protecting themselves. Some later secured protection through signing with overseas record labels which allowed them access to reputable lawyers and managers who guided them.

Marley's first publishing contract was with JAD Records, who recognised his prowess as a songwriter. This resulted in Johnny Nash (a principal of JAD Records) recording a number of Marley's compositions including "Stir It Up" and "Guava Jelly". Marley, according to his former accountant, Colin Leslie, felt the deal was bad and when he signed with Island Records, he found a way to circumvent that contract.

Island Records' act, Jimmy Cliff, was one of the first Jamaican acts to sign to a foreign based record company. Through this contractual arrangement, Cliff was able to secure ownership of the rights to his works.

The bands Third World and Inner Circle were also all signed to publishing companies overseas, securing this same privilege. Unfortunately, there were numerous examples of others challenged to secure the rights of their work. One such example was Lloyd “Judge” Ferguson of the Mighty Diamonds, who penned the lyrics for a song that became the international hit “*Pass The Dutchie*”, by Musical Youth. The group and Judge subsequently found themselves in a legal battle due to claims from different parties, to the musical works in the recording. The battle is still not settled.

It is clear that within the Jamaican music industry there was a duality of hegemonic and counter-hegemonic practices in the creative process. This was a feature which has not been given enough attention from scholars in ethnomusicology, cultural studies and anthropology. On one level the hegemonic pop style of the culture industry centered on a white mainstream audience fully entrenched in a capitalistic power structure. As Attali suggests, “In music, as in the rest of the economy, the logic of succession musical codes parallels the logic of the creation of value.”<sup>4</sup> Simultaneously, the creative process is also constructed on a more democratic framework where the creative worker, whose agenda is influenced by the creation of the super ordinate personality, practices a non-economic motivation for music making. The star, the star-boy, identity and resistance of the colonial and post-colonial hegemony, all trumping “the logic of the creation of value”<sup>5</sup>.

In addition, the creation of stars in the Kingston music industry was a major motivation for musician and performers.

Emerging from a state of anonymity and oppression by a colonial and neocolonial system, black under-privileged youth were concerned more with establishing an identity, a concern that uplifted them when the prevailing philosophy of colonialism relegated them to second-class status. Star status moved these performers and musicians into another realm of celebrity, glamour and fame. Simon Frith notes:

The relationship of musicians and fan is not just a matter of success and glamour. Simply by being at work when other people are at play, all professional musicians, whatever their origins and however close their ties to a particular audience, are distanced from their listeners' lives. Even at the most small-time level, music-making means working in the world of all those people who don't have to get up in the morning for a nine to five business. Bohemianism is a musician's natural ideology: the value of leisure, hedonism and style, are elevated above the conventions and routines of normal society (1981: 77).

### **A Call to Action**

During this period, many composers and producers, led by the Jamaica Federation of Musicians (JFM) and Affiliated Artistes Union, began lobbying for a proper copyright law to ensure protection for the creators of original works.

Desmond Young, president of JFM recalls, "The JFM was the lone voice in the call for a new copyright law; when we invited other groups to support the cause, we got none. I must commend Sonny Bradshaw, who started the lobby which was continued by Headley Jones and me."

Sonny Bradshaw, in an interview, recounted that his



first battle was to get producers to start putting the credits of the records they manufactured. In the 1960s many producers developed the practice of manufacturing 7-inch 45RPM vinyl records without proper labeling. Bradshaw felt this was the first step towards recognising the Jamaican author.

“The producers were up in arms when I started this campaign,” Bradshaw recalled; Clancy Eccles told Barbara Gloudon, the Editor of the *Star* back then, “Mi nah stop do blanks”. Bradshaw stated that after a sustained campaign in the daily tabloid *Star* in his “Music Man” column, and meetings with the producers, he was able to secure an agreement with the main producers to credit the performers and writers of the songs they produced on the labels of the records they manufactured.

In 1977, the lobbyists for a new copyright act had some success when a new act was tabled in Parliament. Attorney-at-law, Earl Witter, during an interview, stated that the new law was not adequate enough and took too long to be tabled in Parliament. Dianne Daley notes, “This act was silent on the rights of performers and the issue of moral rights”.

Bradshaw also states that the law needed upgrading by the time it was ready to be tabled in Parliament and suggested to the government not to attempt to pass this outdated act. The country however, became a member of the *World Intellectual Property Organization* in 1978.

### **Towards a New Act 1993**

Based on continued lobbying and the intervention of international agencies, the Copyright Unit was established in

1990. This unit was responsible for bringing together all the stakeholders, media, producers, authors and composers to submit recommendations and to put the issue of copyright in the public sphere.

This eventually led to the passing of the Copyright Law of 1993. Jamaica became a member of *the Berne Convention for the Protection of Literary and Artistic Works* (1886, revised in 1971), the *Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms* (the *Geneva or Phonograms Convention*) and the *International Convention on the Protection of Producers, Performers and Broadcasting Organization (The Rome Convention)* (DALEY, 01:3-4).

This was followed by agreements between the U.S. and Jamaica on the production and enforcement of intellectual property rights in 1994. Through this agreement, Jamaica embarked on a total update of its intellectual property regime. In 1995, Jamaica became a signatory to the agreement on *Trade Related Aspects of Intellectual Property Rights* (TRIPS) through the *World Trade Organization* (WTO). These developments as Daley puts it, “cemented its commitment to an international and modern standard of copyright protection”.

### **Homegrown Societies**

Having enacted the Copyright Law of 1993, Jamaica now had to move to the next stage. There was need to establish the necessary administration mechanisms and “systems critical to successful implementation of its law, increasing public awareness

on copyright, combating piracy and ensuring that the legislation keeps pace with the new technological digital revolutions” (DALEY, 2001:4).

Hence, in a relatively short period, through the establishment of a national task force on collective administration of copyright, four collecting societies were established between 1995 and 2000. These indigenous societies include the *Jamaica Association of Composers, Authors and Publishers* (JACAP), the *Jamaican Musical Rights Administration* (JMRAS), the *Jamaican Copyright Licensing Agency* (JAMCOPY) and the *Jamaica Performers Administration Society* (JPAS).

The process was the final stroke towards re-intermediation in the Jamaican music industry value chain, consistent with a capitalist driven best practices agenda and the realignment of the counter-hegemonic movement, which the Open Domain environment fostered for so long in the music industry.

### **International Cohesion or National Consolidation?**

Champions of copyright saw these developments as a positive move towards the protection of rights for owners. However, one wonders if the passage of the copyright laws of 1993 had more to do with overseas interests, that is the U.S. and the European Union, wanting to protect the intellectual property of the major entertainment conglomerates, rather than putting to an end the upfront piracy of Jamaican, American and British works by Jamaicans for several decades.

The 1990s saw a serious outcry from major record companies, film studios and cable content providers over the

piracy and infringement of copyright materials, which took place in the developing nations, including China and the Caribbean. This might have been the impetus for the Jamaican government to move with such speed after years of apathy, to enact this new law and to comply with rules of the agreements and conventions they were signatories to.

Brendan Scott's analysis actually supports this argument.

The rules of the Berne Convention were quite simple – each country was accorded one vote without taking account of the relative economic power of that country or of the works produced by neither that country nor whether the country was a net consumer or net producer of works. As a result, over time, as more developing nations became members to the Berne convention they formed voting blocks which were able to outvote the developed countries on resolutions. One consequence of this was the Stockholm Protocol in 1967, which gave developing countries broad access rights to copyright materials. Ultimately, it was actions such as this, which prompted the United States to shift copyright and similar negotiations out of the WIPO forum into other forums such as the GATT talks. Sensing the opportunity for U.S. firms to secure profits from its lead in the computer revolution, the United States, in 1981, during the chairmanship of the then head of Pfizer Corporation on the Advisory Committee for Trade Negotiations, the committee created its Task Force on Intellectual Property. The long-term goal of that task force was the placing of copyright and similar negotiations within the GATT. At about this time, the United States began to use its GSP (Generalised System of Preferences) mechanism to apply economic pressure to nations with “inadequate intellectual property protection.

In 1984, the United States amended its *Trade Act* to include Intellectual Property for 301 Trade Processes. This was later supplemented in 1988 with Regular, Special and Super 301 Processes. In essence, under these arrangements, the United

States identifies countries which have regulatory regimes which the United States considers to be inappropriate and enters negotiations with those countries to modify those regulatory regimes. Where those negotiations do not meet with a sufficient level of “success” over a given period, the U.S. then applies economic sanctions on that country. By targeting the individual countries beforehand, the U.S. was able to remove developing country resistance to the TRIPS initiative in the 1994 Uruguay Round of GATT.” (SCOTT: 2001: 9)

This clearly shows the intention of the United States to secure and enforce the protection of the intellectual property of the major entertainment conglomerates which control massive catalogues of music, books, movies, television programming and magazine that have been the victim of infringement globally. Marshall McLuhan’s global village postulations on the power of technology, has had a serious impact on intellectual property issues. The attack was not only at the governmental level but also on the individual. In the 70s there were a few lawsuits against Jamaican producers by major publishers in the United States. The most famous was against record producer Joe Gibbs who covered the Charley Pride song, *Someone Loves You Honey* performed by JC Lodge. This was done in the spirit of

the Open Domain where attributions and permission for use of work is an alien concept. The song went on the national chart in Britain, at which point it also entered the culture industry and the capitalist structure of the international music industry. Hence the Gibbs-produced sound recording was now subject to the hegemonic ramifications of copyright philosophy. The owners of the copyright declared infringement of their work. This resulted in a lawsuit against Gibbs, which literally put Gibbs out of the music business.

### **Conclusion**

Copyright is a legislative monopoly, which was a direct response to the development of modern printing. The need for copyright was defended as protection for authors and creators of original works. It argued that whatever a man created from his creative endeavours, he had the right to protection of that right and by extension an economic right to exploit his creation to his benefit.

Copyright, however, was also a tool for censorship and was antithetical to the notion of freedom of speech and creativity. Copyright continues to be a legislative monopoly, which is not sensitive to the right of the real creators of cultural production. When one examines the economic structure of the copyright discourse, one realizes that the creators are among the last to earn and earns the least in any work. As Jessica Litman suggests, “cultural production is typically a matter of appropriation and transformation rather than creation.”

How will copyright doctrine play out in Jamaica, which

has been a site of exploitation, piracy and communal authorship? Will compliance to requirements of globalization reap the necessary economic benefits, which copyright supporters are hoping for? The open domain practice of the Jamaican music industry has effectively discredited the economic defense of the copyright philosophy. Without consistent economic motivations the Jamaican creative imagination has never stalled.

Copyright owners have been strident in their defense of their intellectual property and have made moves to extend the life of copyright to life of the author from 50 to 70 years (*Sonny Bono Copyright Term Extension Act 1998 U.S.*). This is an issue that is now on the table in Jamaica, following in the footsteps of the European Union. There have been a number of attempts to limit fair use privileges and to commodify works that are in the public domain. There has also been aggressive copyright enforcement against sampling. With all this, one fears that copyright is fast becoming again a tool for censorship and monopolistic oppression. (PALLAS LOREN, 2006)

Some scholars have suggested the dissolution of copyright; due to its monopolistic control and the inability to police infringement due to the easy access that technology has imposed. Is this a proposition that would serve small nation states, like Jamaica, who for over a hundred years, have not been at the forefront of copyright control over cultural production? How would this affect the great expectations of state agencies like the *Jamaica Trade and Invest* (JTI) and the *Jamaica Intellectual Property Office* (JIPO) that have been promulgating the economic windfall that the proper exploitation of intellectual property will afford?

According to statistics from the *International Intellectual Property Alliance*, the copyright industries of the United States 2002 earned US\$1.25 trillion, which accounted for 12% of Gross Domestic Product (GDP) and employed 4% of U.S. workers (5.48 million). It is certainly hard to argue with the impact of copyright as an economic juggernaut. However, not enough attention is placed on how copyright helps to constitute and reinforce media and cultural hegemony. Small nation states such as Jamaica are certainly at a disadvantage if one were to accept that the richer and powerful developed states like the United States with the TRIPS/WTO agreement, has shifted the discourse of copyright from the sphere of cultural production to the realm of politics and economics.

#### Notas

<sup>1</sup> See: Spitzer J, Walters R, *Making Sense of American Song* <http://historymatters.gmu.edu>

<sup>2</sup> In the early days music had to be registered to be eligible for protection under copyright laws. This changed in

<sup>3</sup> This phrase is borrowed from Robert Kelly.

<sup>4</sup> See: Attali, Jacques. "Noise. The Political Economy of Music" In: *Theory and History of Literature*. Vol 16. Minnesota: University of Minnesota Press, June 1985.

<sup>5</sup> Ibidem

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